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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,567	07/29/2003	John F. Swigart	005127.00121	4866
22909	7590	12/06/2004	EXAMINER	
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,567

Applicant(s)

SWIGART ET AL.

Examiner

Marie Patterson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/24/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

Claim Rejections - 35 USC § 112

1. Claim 45 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 45 appears to merely repeat previously claimed limitations and therefore it is not clear what further structural limitation applicant intends to encompass with such language.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 11, 12, 14, 15, 23-25, 38, 39, 44, 45, 48, 49, and 53 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Biotteau (French 2614510).

4. Claims 1, 2, 11, 12, 14, 15, 23-25, 38, 39, 44, 45, 48, 49, and 53 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lakic (5846063).

Numerous embodiments of Lakic show a first pump chamber (such as at 53 and 73) surrounded by a second pressure chamber (22) with a fluid path between the chambers (such as at 59 and 70) with a one way valve therein and a second valve and path (such as at 63 and 71) from the exterior to the first chamber as claimed. It is noted that the above specifically pointed out elements are only examples of one embodiment of Lakic

Art Unit: 3728

that reads on the claims and that there are other embodiments that also read on the claims.

5. Claims 26, 27, 29, 35-37, 48-51, and 53 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Huang (5335382).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-5, 16-18, 26, 27, 35-37, 40-42, 47, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Biotteau or Lakic in view of Huang (5335382).

Either Biotteau or Lakic shows a shoe with a fluid system therein substantially as claimed except for the system being formed by two sheets of polymeric material. Huang teaches forming a fluid system which has a pump, pressure chamber, conduits, and valves by bonding two polymeric sheets of material (see figures 8 and 9). It would have been obvious to form the fluid system from two polymeric sheets as taught by Huang in the shoes and fluid systems of either Biotteau or Lakic to make the system cheaper, quicker, and easier to manufacture.

In reference to claim 47, Huang teaches placing the central pumping chamber so that it extends above the top surface of the outer surrounding chamber. It would have

Art Unit: 3728

been obvious to form the chambers as taught by Huang in the system of either Biotteau or Lakic to increase the pumping.

8. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 3-5, 16-18, 26, 27, 35-37, 40-42, 50, and 51 above, and further in view of Pavone (6192606).

Either Biotteau or Lakic as modified above shows a shoe with a fluid system therein substantially as claimed except for the exact valve. Pavone teaches the use of any available valve for use in footwear fluid systems (column 3 lines 25-30). A valve formed by a polymer layer with an inlet biased open by a weld bead is considered to be a known available valve (some are known as duck bill valves). It would have been obvious to use any known valve as taught by Pavone for the valve in the fluid system of either Biotteau or Lakic as modified above to provide a lightweight, durable, inexpensive system.

9. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 3-5, 16-18, 26, 27, 35-37, 40-42, 50, and 51 above, and further in view of Niculae (French 2670369).

Either Biotteau or Lakic as modified above shows a shoe with a fluid system therein substantially as claimed except for a filter at the inlet valve. Niculae teaches providing a filter (1) at an inlet of a fluid system. It would have been obvious to provide a filter as taught by Niculae in the inlet of the fluid system of either Biotteau or Lakic to preserve the integrity of the system.

Art Unit: 3728

In reference to claim 34, Biotteau or Lakic as modified above shows a system substantially as claimed except for the exact material for the filter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polytetrafluoroethylene which is well known and conventionally used for filters, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

10. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 3-5, 16-18, 26, 27, 35-37, 40-42, 50, and 51 above, and further in view of Allen (5363570).

Either Biotteau or Lakic shows a shoe with a fluid system substantially as claimed except for the surrounding chamber extending below the central chamber. Allen teaches forming a fluid system so that a surrounding chamber (214) extends below and above a central chamber (212). It would have been obvious to form the chambers as taught by Allen in the system of either Biotteau or Lakic to allow the heel of the wearer to be cupped and stabilized.

11. Claims 6, 7, 19, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Biotteau or Lakic in view of Pavone (6192606).

Either Biotteau or Lakic shows a shoe with a fluid system therein substantially as claimed except for the exact valve. Pavone teaches the use of any available valve for use in footwear fluid systems (column 3 lines 25-30). A valve formed by a polymer layer with an inlet biased open by a weld bead is considered to be a known available valve

Art Unit: 3728

(some are known as duck bill valves). It would have been obvious to use any known valve as taught by Pavone for the valve in the fluid system of either Biotteau or Lakic to provide a lightweight, durable, inexpensive system.

12. Claims 8-10, 20, 21, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Biotteau or Lakic in view of Niculae (French 2670369).

Either Biotteau or Lakic shows a shoe with a fluid system therein substantially as claimed except for a filter at the inlet valve. Niculae teaches providing a filter (1) at an inlet of a fluid system. It would have been obvious to provide a filter as taught by Niculae in the inlet of the fluid system of either Biotteau or Lakic to preserve the integrity of the system.

In reference to claims 10 and 21, Biotteau or Lakic as modified above shows a system substantially as claimed except for the exact material for the filter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polytetrafluoroethylene which is well known and conventionally used for filters, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

13. Claims 13, 22, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Biotteau or Lakic in view of Allen (5363570).

Either Biotteau or Lakic shows a shoe with a fluid system substantially as claimed except for the surrounding chamber extending below the central chamber. Allen teaches forming a fluid system so that a surrounding chamber (214) extends below and

Art Unit: 3728

above a central chamber (212). It would have been obvious to form the chambers as taught by Allen in the system of either Biotteau or Lakic to allow the heel of the wearer to be cupped and stabilized.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9306 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson
Primary Examiner
Art Unit 3728